IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14955 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANJAY SHASHIKANTBHAI SOLANKI - Petitioner(s)

Versus

ASSISTANT P F COMMISSIONER - Respondent(s)

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Appearance :

MR KISHOR M PAUL for Petitioner No(s).: 1.

MR MS RAO for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

ORAL JUDGMENT

Rule. Shri MS Rao, learned advocate waives service of Rule on behalf of the respondent No.1. With the consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the respondent dated 28.6.2005 in not allotting Provident Fund Code number to the petitioner.

3. It appears from the record, that the petitioner claims to be doing the work of contract labour and has got the contract of supply of labour for petrol pump. He applied to the respondent for Provident Fund Code Number as as per the contract entered into between the petitioner and the Gujarat State Civil Supplies Corporation Ltd., obtaining of Provident Fund Code Number was must and the said application was submitted on 27.5.2005 along with necessary documents including PAN Card number, Statement of Workers, Receipt of contract etc. It is the case on behalf of the respondent that by communication dated 28th June 2005 the application of the petitioner for allotment of P.F. Code number came to be rejected on the ground that the employment strength is less than 20. Being aggrieved and dissatisfied with the action/order of the respondent in rejecting the application of the petitioner for allotment of P.F. Code Number, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. Shri Kishor M. Paul, learned advocate appearing on behalf of the petitioner has vehemently submitted that rejection of the application for allotment of P.F. Code Number by the respondent on the ground that employment strength is less than 20 is factually incorrect and in fact in the application itself the petitioner has produced the statement with regard to existing workers which is 20 which shows non-application of mind on the part of the respondent. It is also further submitted that in fact there are other contractors who are having 4 to 5 workers are issued the P.F. Code Numbers and he has produced the orders with regard to those contractors along with Affidavit-in-Rejoinder and therefore submitting that the action of the respondent is discriminatory and violative of Article 14 of the Constitution of India requested to allow the present Special Civil Application.

5. In response to the notice issued by this Court, Shri M.S. Rao, learned advocate appears on behalf of the respondent and has filed an affidavit-in-reply. It is submitted that on verification it is found that the petitioner is not a genuine contractor and the application submitted by the petitioner for allotment of P.F. Code Number is not bonafide. It is submitted in the affidavit-in-reply that on verification by the Employment Officer it is found that the petitioner has never employed 20 employees on any single day in March 2005 and that the

petitioner has not submitted any reliable proof and therefore it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It appears from the communication dated 28th June 2005 that the application of the petitioner for allotment of P.F. Code number is rejected only on the ground that he has not employed more than 20 workers and there is no other reason given by the respondent. Therefore, the submission on behalf of the respondent, that the petitioner is not a bonafide applicant for allotment of P.F. Code number and/or that his bonafides to get P.F. Code Number is doubtful, cannot be accepted. The things which were not there while passing the impugned order, at the time of rejecting the application for allotment of PF Code number, cannot be permitted to be substituted and/or taken in affidavit-in-reply. As regards the reason given by the respondent while passing the impugned decision dated 28.6.2005 to the effect that the workers are less than 20, the petitioner has produced the orders with regard to other contractors in whose favour the PF Code numbers are allotted who are only having 4 or 5 workers. Under the circumstances, the action of the respondent in denying the P.F. Code number is discriminatory and violative of Article 14 of the Constitution of India as the very respondent has

allotted such Code numbers to other contractors who are having less than 20 workmen.

7. Under the circumstances, the impugned communication dated 28.6.2005, rejecting the application of the petitioner for allotment of P.F. Code number, cannot be sustained and the same is required to be quashed and set aside.

8. For the reasons stated hereinabove, the impugned decision/order dated 28.6.2005 is hereby quashed and set aside. The respondent is directed to reconsider the application of the petitioner afresh in accordance with law and on merits as early as possible preferably within the period of 4 weeks from the date of receipt of this order. Rule is made absolute to the aforesaid extent. The respondent is directed to pay the amount of Rs. 2500 towards costs of the present Special Civil Application which shall be made good within the period of two weeks from today.

[M.R. Shah, J.]

RMR.